



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0960; FRL-9799-3]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the Federal Register on January 7, 2013 and concerns local rules that regulate inhalable particulate matter (PM) emissions from sources of fugitive dust such as unpaved roads and disturbed soils in open and agricultural areas in Imperial County. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule will be effective on [Insert date 30 days from the date of publication in the Federal Register].

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2012-0960 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at

<http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, EPA Region IX, (415) 947-4125, vineyard.christine@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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#### **I. Proposed Action**

On January 7, 2013 (78 FR 922), EPA proposed to approve the following rules into the California SIP.

Local Agency	Rule #	Rule Title	Adopted	Submitted
ICAPCD	800	General Requirements for Control of Final Particulate Matter (PM <sub>10</sub> )	10/16/12	11/07/12
ICAPCD	804	Open Areas	10/16/12	11/07/12

Local Agency	Rule #	Rule Title	Adopted	Submitted
ICAPCD	805	Paved and Unpaved Roads	10/16/12	11/07/12
ICAPCD	806	Conservation Management Practices (CMPs)	10/16/12	11/07/12

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

## **II. Public Comments and EPA Responses**

EPA's proposed action provided a 30-day public comment period. During this period, we received from the following parties:

1. Luis Olmedo, Comite Civico Del Valle (Comite), letter dated September 20, 2012 (resubmitted via email January 3, 2013).
2. Lisa Belenky, Center for Biological Diversity (CBD), letter dated September 20, 2012 (resubmitted via email February 6, 2013).
3. Eric Massey, Arizona Department of Environmental Quality (ADEQ), letter dated February 6, 2013.

**Comment #1** - Comite claims that ICAPCD Rule 800 does not meet Best Available Control Measure (BACM) requirements because it does not address recreational off-highway vehicle (OHV) use on

private land. The comment mentions OHV requirements in Arizona and Nevada that apply on both public and private land. The comment acknowledges that Rule 804 would regulate OHV use on private land, but asserts that it is not enforceable because it does not require dust control plans (DCPs).

**Response #1** - The private land OHV restrictions in ICAPCD Rule 804 are more stringent than the public land OHV restrictions in Rule 800. Rule 804 Section E.1 requires all persons with jurisdiction over even relatively small open areas to maintain a stabilized surface at all times and limit visible dust emissions (VDE) to 20% opacity. This effectively prohibits OHV activity on private land because significant OHV activity on a dirt lot would generally lead to unstabilized surfaces and over 20% opacity. Additionally, Rule 804 Section E.2 requires private land owners to prevent illegal OHV activity by posting signs or installing physical barriers.

**Comment #2** - Comite claims that ICAPCD has not, as directed in EPA's limited disapproval, evaluated "the feasibility and impacts of additional restrictions in recreational OHV areas, such as closing some of the 250 square miles that are open to OHV use..."

**Response #2** - Such evaluation was performed and included in

APCD's submittal of the Regulation VIII SIP revisions.<sup>1</sup> Sections 3 and 4 of this evaluation list and analyze the feasibility and impacts of additional OHV restrictions including restrictions on OHV locations. Regarding the potential to close some of the 250 square miles, for example, section 4.1 states that, "BLM and State Parks officials believe that further limiting the size of OHV areas would have the effect of increasing illegal OHV activity on non-travelled lands."

**Comment #3** - Comite states that ICAPCD Rule 802 does not fulfill BACM requirements because it inappropriately exempts transportation/hauling of bulk material within a facility's property, eviscerating the intent of Rule 802. The comment notes that South Coast Air Quality Management District (SCAQMD) Rule 403(g) does not include this exemption.

**Response #3** - We agree that Imperial Rule 802 would be improved by removing the exemption for transportation/hauling of bulk material within a facility's property similar to SCAQMD 403(g). However, bulk material, the subject of Imperial Rule 802, has not been identified as a significant PM<sub>10</sub> source subject to BACM requirements.<sup>2</sup> As a result, ICAPCD is not required to improve Rule 802 in this way at this time, ICAPCD did not revise and

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1 "Off-Highway Vehicle Area Best Available Control Measures Assessment," prepared for ICAPCD by Environ International Corporation, October 2012 (2012 BACM assessment).

2 See, e.g., 75 FR 8010 (February 23, 2010).

resubmit Rule 802, and EPA is not acting on Rule 802 at this time.

**Comment #4** - Comite states that ICAPCD Rule 803 does not fulfill BACM requirements because it inappropriately exempts agricultural roads from track-out requirements unlike other areas in California including San Joaquin Valley Air Pollution Control District (SJVAPCD).

**Response #4** - The comment does not identify and we are not aware of any specific SJVAPCD track-out requirements that are more stringent than ICAPCD requirements. SJVAPCD's general carryout and track-out rule specifically exempts agricultural operations.<sup>3</sup> SJVAPCD's agricultural dust rule simply requires that agricultural roads comply with California State law regarding track-out,<sup>4</sup> to which Imperial County sources are also subject. In addition, ICAPCD Rule 806 includes track-out BACM for agricultural operations comparable to those in SJVAPCD's analogous conservation management practices (CMP) requirements.<sup>5</sup>

**Comment #5** - Comite states that ICAPCD Rule 804 does not fulfill BACM requirements because it imposes minimal controls on

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3 "Carryout and Trackout," SJVAPCD Rule 8041, Section 4.0, adopted August 19, 2004.

4 "Agricultural Sources," SJVAPCD Rule 8081, Section 5.4, adopted September 16, 2004.

5 "List of Conservation Management Practices," May 20, 2004, referenced by "Conservation Management Practices," SJVAPCD Rule 4550, adopted August 19, 2004.

disturbed open lots above certain sizes with no regard as to what activities, beyond OHV, are occurring. The comment claims that SCAQMD Rule 403, in contrast, controls lots of any size with disturbed surface area and contains additional control, permitting and reporting requirements on other types of activities, including construction and confined animal facilities (CAF).

**Response #5** - ICAPCD estimates that over 99.5% of open areas potentially affected by ICAPCD Rule 804 are in parcels of 3 acres or greater.<sup>6</sup> We expect, therefore, that lowering this threshold would have very limited emission impact while being relatively expensive by applying to the smallest sources. ICAPCD also notes that SJVAPCD Rule 8051 has a similar 3 acre threshold previously approved as BACM and projected to capture 98% of parcel acreage in SJVAPCD.<sup>7</sup> ICAPCD Rule 804 contains relatively stringent enforceable requirements common to other approved dust regulations found elsewhere (e.g., SJVAPCD 8051). Sources must maintain records demonstrating that they have limited opacity to 20% by one of three defined soil stabilization techniques. The comment notes that SCAQMD Rule 403 imposes additional requirements on other activities,

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6 "Draft Final Technical Memorandum, Regulation VIII BACM Analysis," Prepared for ICAPCD by Environ International Corp, October 2005 (2005 BACM Analysis), Appendix C, pg. C-19.

7 Ibid.

including construction and CAFs. However, ICAPCD provides additional requirements for these activities in other regulations (ICAPCD Rule 801, Construction and Earthmoving Activities, and Rule 217, Large Confined Animal Facilities Permits Required) which are not subject of today's action. In addition, neither construction nor CAFs have been identified as significant PM<sub>10</sub> sources subject to BACM requirements.<sup>8</sup> As a result, ICAPCD is not required to apply BACM to these sources at this time and EPA is not acting on ICAPCD Rules 217 or 801. However, we agree that SCAQMD Rule 403 does impose some additional specific requirements that ICAPCD should consider if additional emission reductions are needed in the future. We also note that ICAPCD previously considered additional specificity such as that included in SCAQMD Rule 403, but determined it was not more stringent than ICAPCD Regulation VIII.<sup>9</sup>

**Comment #6** - Comite asserts that ICAPCD Rule 805 does not fulfill BACM requirements because it inappropriately exempts agricultural roads, and regulates them under less stringent requirements in ICAPCD Rule 806. This exemption is contrary to EPA's earlier recommendations that, "ICAPCD must remove the exemption in Rule 805 Section D.2 or demonstrate how BACM is met

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<sup>8</sup> See, e.g., 75 FR 8010 (February 23, 2010).

<sup>9</sup> 2005 BACM analysis, appendix B, pg. B-6.

in Imperial County for farm roads and traffic areas that are subject to less stringent requirements than other roads and traffic areas in the County and farm roads and traffic areas in other areas." The comment mentions, in contrast, SJVAPCD requirements.

**Response #6** - The comment is correct that EPA previously identified the exemption in ICAPCD Rule 805 Section D.2 as a rule deficiency, and ICAPCD has not removed this exemption from Rule 805.<sup>10</sup> However, ICAPCD has addressed the substance of this deficiency by establishing appropriate opacity limits and stabilization requirements for agricultural roads, in addition to CMP requirements, in Rule 806, particularly in Sections E.3 and E.4. These requirements are analogous to, and more stringent than,<sup>11</sup> analogous requirements in SJVAPCD. See also Response #11 below.

**Comment #7** - Comite states that ICAPCD Rule 805 Section E.7 does not fulfill BACM requirements because it fails to enforceably require compliance with road paving requirements. The comment states that this lack of enforceability is a particular concern because EPA has stated that Imperial County must expedite these

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<sup>10</sup> 75 FR 39367 (July 8, 2010).

<sup>11</sup> SJVAPCD Rule 4550 requires opacity limits and stabilization on unpaved roads when daily vehicle trips (VDT) are 75 or more or 25 VDT for 3-axle vehicles, whereas ICAPCD Rule 806 contains these requirements for 50 or more VDT or 20 VDT for 3-axle vehicles.

road paving requirements or, "demonstrate good faith efforts to increase funding and priority of road stabilization projects consistent with national guidance."

**Response #7** - EPA previously identified ICAPCD Rule 805 Section E.7 as deficient because it was not clear that the County was required to implement (and not just submit) a stabilization plan; stabilize different unpaved roads each year; and maintain all stabilized roads.<sup>12</sup> Adopted and submitted revisions to ICAPCD Rule 805 Sections E.7.b and c explicitly and adequately address these concerns. For example, Section E.7.b was revised to explicitly require plan compliance. In addition, ICAPCD adequately demonstrated "good faith efforts to increase funding and priority of road stabilization projects," by correspondence from the County Public Works Department explaining budget efforts<sup>13</sup> along with information provided in ICAPCD's 2009 PM<sub>10</sub> SIP.<sup>14</sup> We assume this addresses the concerns of the comment as we are not aware of any other enforcement concerns with Rule 805 Section E.7.

**Comment #8** - Comite asserts that ICAPCD Rule 805 does not

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<sup>12</sup> Ibid.

<sup>13</sup> Letter from William Brunet (Imperial County Department of Public Works) to Brad Poiriez (ICAPCD), May 11, 2012, included as part of comment #4 in CARB's 2012 Regulation VIII SIP submittal to EPA.

<sup>14</sup> "2009 Imperial County State Implementation Plan for Particulate Matter Less Than 10 Microns in Aerodynamic Diameter, Final," adopted by ICAPCD Governing Board on August 11, 2009, e.g., section 4.2.5, pg. 4-7.

fulfill BACM requirements because it does not impose sufficiently stringent control measures. Specifically, the comment notes that while SCAQMD Rule 403 and Imperial Rule 805 Section E both impose controls based on the type of road, SCAQMD Rule 403 also requires additional measures for roads used for construction activity or large operations.

**Response #8** - SCAQMD Rule 403 contains few requirements specific to roads used at construction activity or large operations and it is not clear which requirements are subject of this comment. We note the following specific requirements in Rule 403 Table 1 regarding construction: section 15-1, stabilize all off-road traffic and parking areas; section 15-2, stabilize all haul routes; and section 15-3, direct construction traffic over established haul routes. Similarly we note in Rule 403 Table 2 regarding large operations: section 4a, water all roads used for any vehicular traffic at least once per every two hours of active operations; or section 4b, water all roads used for any vehicular traffic once daily and restrict vehicle speeds to 15 miles per hour; or section 4c, apply a chemical stabilizer to all unpaved road surfaces in sufficient quantity and frequency to maintain a stabilized surface. We do not see a direct analog to section 15-3 in ICAPCD Rules 801 or 805, although we would not expect significant emission impacts partly because

construction sites are incentivized to minimize the active roads requiring stabilization. The comment has not provided and we have no evidence that the other SCAQMD requirements listed above are more stringent than the road stabilization requirements in ICAPCD Rules 801 and 805. We also note that construction has not been identified as a significant PM<sub>10</sub> source subject to BACM requirements in ICAPCD.<sup>15</sup> As a result, ICAPCD is not required to submit Rule 801 at this time and EPA is not acting on Rule 801 in this action.

**Comment #9** - Comite states that ICAPCD Rule 806 does not fulfill BACM requirements and is rendered unenforceable because it lacks a CMP application submittal and review process, and requires only that agricultural operators maintain a CMP plan and records to confirm implementation. The comment asserts (and references *Latino Issues Forum v. EPA* and EPA's 2010 action on Rule 806 for this assertion) that BACM requires that Rule 806 maintain an application submittal and review process such as contained in SJVAPCD Rule 4550 and Great Basin Unified Air Pollution Control District (GBUAPCD) Rule 502.

**Response #9** - EPA's 2010 limited approval/disapproval of Regulation VIII notes that the CMPs, "are broadly defined and

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<sup>15</sup> See, e.g., 75 FR 8010 (February 23, 2010).

there is no other mechanism in the rule to ensure specificity.”<sup>16</sup>

As suggested here and made clearer in EPA’s TSD supporting our 2010 proposed action,<sup>17</sup> the deficiency in the rule is the lack of specificity in defining the CMPs. The most direct way to address this is to more specifically define the CMPs.

Alternatively, this deficiency could be addressed by adding a CMP application submittal and approval process, such as contained in SJVAPCD Rule 4550.<sup>18</sup> ICAPCD has selected the former approach in revising ICAPCD Rule 806, and has adequately addressed this rule deficiency by extensively clarifying and strengthening numerous CMP definitions and related text in Rule 806. In doing so, ICAPCD has incorporated sufficient clarity and specificity directly into the CMP definitions and requirements so that CMP implementation and enforceability at a BACM level is clear to all parties. For example, the definition of mulching in Rule 806 Section C.30 was revised from: “Applying or leaving plant residue or other material to soil surface. It reduces entrainment of PM due to winds as well as reduces weed competition thereby reducing tillage passes and compaction.”

The new text reads: “Reducing PM10 emissions and wind erosion

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<sup>16</sup> 75 FR 39367 (July 8, 2010).

<sup>17</sup> “Technical Support Document for EPA’s Proposed Rulemaking on Revisions to the California State Implementation Plan as submitted by the State of California, for the Imperial County Air Pollution Control District,” U.S. EPA, Region 9 Air Division, February 2010, (2010 TSD) pg. 9.

<sup>18</sup> See *Latino Issues Forum v. EPA*, 558 F.3d 936, 949 (9<sup>th</sup> Cir. 2009).

and preserving soil moisture by uniformly applying a protective layer of plant residue or other material to a soil surface prior to disturbing the site to reduce soil movement. Mulching material shall be evenly applied, and if necessary, anchored to the soil. Mulch should achieve a minimum 70% cover, and a minimum of 2 inch height above the surface. Inorganic material used for mulching should consist of pieces of .75 to 2 inches in diameter."<sup>19</sup>

**Comment #10** (p.8) - Comite notes that ICAPCD Rule 806 only applies to farms above 40 acres, while SCAQMD and Maricopa's rules apply to farms above 10 acres, and Comite claims that ICAPCD's BACM analysis does not address whether lowering Rule 806's threshold could obtain further emission reductions that are significant and economically feasible.

**Response #10** - It is standard practice for air pollution regulations to exempt small sources which contribute relatively few emissions and are the least cost-effective to control. ICAPCD's 2009 PM<sub>10</sub> SIP estimates that Rule 806's 40 acre threshold captures 97% of total emissions,<sup>20</sup> suggesting that there are no further emission reductions that are significant

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19 "Technical Support Document for EPA's Notice of Proposed Rulemaking on Revisions to the California State Implementation Plan as submitted by the State of California, for the Imperial County Air Pollution Control District," U.S. EPA, Region 9 Air Division, December 2012, (2012 TSD) pg. 8.

20 2010 TSD, pg 12.

and economically feasible. While SCAQMD and Maricopa have lower applicability thresholds than ICAPCD, rules approved as BACM in other areas have higher thresholds (e.g., SJVAPCD's is 100 acres). We also note that this threshold remains unchanged from the previous version of ICAPCD Rule 806, and no comments were provided when EPA acted on it in 2010.

**Comment #11** - Comite claims that ICAPCD Rule 806 imposes insufficient controls on unpaved farm roads compared to Rule 805 requirements for Imperial non-farm roads and other area requirements for farm roads. As an example, the comment notes that SJVAPCD requires farm roads to meet control measures required for agricultural operations in addition to general requirements that apply to all other roads.

**Response #11** - We agree that this was a deficiency of the previous version of ICAPCD Regulation VIII. However, ICAPCD has revised Rule 806 Sections D.2, D.3, E.3 and E.4 to specifically and adequately address this issue. Revised Section E.3, for instance, now requires stabilization of agricultural unpaved roads with 50 or more vehicle daily trips (VDT), similar to that required of non-agricultural roads with 50 or more VDT in ICAPCD Rule 805 Section E.2., and of all unpaved roads with 75 or more VDT subject to SJVAPCD Rule 8081 Section 5.2. See also Response #6 above.

**Comment #12** - Comite asserts that ICAPCD Rule 806's windblown dust controls are inadequate and generally describes the requirements in SCAQMD Rule 403's Agricultural Handbook. The comment states that SCAQMD requires cessation of soil preparation and maintenance activities when winds exceed 25 mph, as well as implementation of one of four specific practices to reduce windblown dust from actively disturbed fields and three of nine specific practices to reduce windblown dust from inactive (fallow) fields.

**Response #12** - SCAQMD's Agricultural Handbook and Imperial Rule 806 are structured somewhat differently, making a direct comparison between the two programs difficult.<sup>21</sup> For example, SCAQMD does not specifically refer to the prohibition on tilling or mulching when wind speeds exceed 25 mph as a "windblown dust control," whereas ICAPCD Rule 806 includes specific provisions, E.6.1 and 2, as "windblown dust controls." Nevertheless, we note that the SCAQMD prohibition applies only when winds exceed 25 mph. In comparison, ICAPCD requires operators to comply with the windblown dust controls specified in E.6.1. (for active cultivation) and E.6.2. (for fallow fields), regardless of wind

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<sup>21</sup>We note that the commenter lists the general requirements in the SCAQMD rule but does not provide any comparison or analysis of the two programs.

speed. The commenter provides no evidence for a finding that the SCAQMD prohibition is more effective than ICAPCD's more generally applicable requirements.

The comment also states that SCAQMD requires operators to comply with "one of four specific practices to reduce windblown dust from actively disturbed fields." Again, because the SCAQMD rule does not specifically refer to "windblown dust," it is difficult to determine whether SCAQMD distinguishes between regulating "windblown dust" and regulating fugitive dust directly emitted during tillage, cultivation, and mulching operations. Nevertheless, we note that the SCAQMD rule requires selection and implementation of one option for "active lands," whereas ICAPCD regulates direct emissions of fugitive dust by requiring selection and implementation of three options, one each from three separate categories of activities: (1) land preparation (E.1.); (2) harvest (E.2.); and (3) cropland-other (E.5.).

For inactive operations, SCAQMD requires operators to select and comply with three of eight specified practices; we believe the comparable provisions for ICAPCD are found at section E.6.1. of Rule 806, in which ICAPCD requires selection and compliance with one of eight specified practices. We note that the practices specified in the SCAQMD rule for inactive

lands are essentially identical to the practices specified in E.6.2. of the ICAPCD rule for fallow lands.

Although it appears that SCAQMD requires more measures for inactive lands than ICAPCD requires for fallow lands, the commenter does not acknowledge other ways in which the ICAPCD rule is more stringent than the SCAQMD program. Overall, both the SCAQMD and ICAPCD programs require agricultural operations to comply with five options each: SCAQMD requires compliance with the 25 mph prohibition, one option for active cultivation and three options for inactive lands; ICAPCD requires selection and implementation of one option to control windblown dust on actively cultivated lands, three additional options for actively cultivated lands, and one option for fallow lands. The commenter provided no information to support a finding that SCAQMD's approach of imposing more requirements on inactive lands is more stringent or more effective at controlling fugitive dust than ICAPCD's approach of imposing more requirements on actively cultivated lands. As we have noted previously, regulations for agricultural sources must be sufficiently flexible to account for the wide range of factors such as crop type, herd size, equipment type, soil type, weather and market conditions, economic circumstances and facility size. In addition, there is a limited amount of technical information regarding the cost

effectiveness of available control measures for agricultural operations. See 71 FR 7684 (February 14, 2006). As a result, it is reasonable to expect that BACM measures for this activity would vary depending on the agricultural practices in different areas and, in fact, Maricopa, South Coast, and San Joaquin agricultural CMP rules have all been approved as BACM despite differences similar to that identified in the comment. Finally, we note that the Imperial Rule 806 is based on and is at least as stringent as SJVUAPCD Rule 4550, which EPA approved as having BACM-level controls. *Id.*

**Comment #13** - Comite states that ICAPCD Rule 802 Section D.1 and Rule 806 Section D.4 provide ICAPCD with excessive discretion to alter SIP-approved control measures, particularly with regard to deviations from required control measures (Rule 802) and development of alternative control measures (Rule 806). The comment notes that EPA's 2010 action on Regulation VIII specifically identified the discretion in Rule 802 Section D.1 as a deficiency.

**Response #13** - We agree that Rule 802 Section D.1 would be improved by removing the discretion described in the comment. However, bulk material, the subject of Imperial Rule 802, has not been identified as a significant PM<sub>10</sub> source subject to BACM requirements. As a result, ICAPCD is not required to improve

Rule 802 in this way at this time, ICAPCD did not revise and resubmit Rule 802, and EPA is not acting on Rule 802 at this time. See also Response #3 above. With regard to the commenter's reference to Rule 806, Section D.4, we assume the comment intended to refer to Rule 806 Section D.6 which contains discretion. This discretion is similar to discretion approved in SJVAPCD Rule 4550 Section 6.2.3.2, and has been restricted by requiring alternative CMPs in ICAPCD to be at least equivalent to the most effective CMPs already available. While such discretion may not be appropriate for more traditional stationary sources, it is reasonable at this time given the variability and limited regulatory history of the affected sources.<sup>22</sup> As ICAPCD gains experience regulating this industry, it may be appropriate to reduce this discretion in the future.

**Comment #14** - Comite asserts that EPA cannot stay CAA sanctions based on a proposed approval of revised Regulation VIII, but only upon final and full approval.

**Response #14** - As explained in our Interim Final Rule, we invoked the good cause exception under the APA as the basis for not providing public comment before the action took effect.<sup>23</sup> Our review of the State's submittal indicated that it was more likely than not that the State had submitted a revision to the

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<sup>22</sup> See, e.g., 71 FR 7684 and 7686 (February 14, 2006).

<sup>23</sup> 78 FR 894 (January 7, 2013).

SIP that addressed the issues we identified in our earlier action that started the sanctions clocks. We concluded that it was therefore not in the public interest to impose sanctions. Our use of the good cause exception thus relieved restrictions that were unnecessary because the State had already taken the steps it needed to take to submit an approvable rule. The only action that remained to be taken was EPA's action to complete our rulemaking, including reviewing and responding to public comments on our proposed action. As explained in our Interim Final Rule, we could have disapproved the rule, if justified by public comments. However, we are now finalizing our action with an approval of the State's submittal, which further supports the reasonableness of our use of the good cause exception to avoid needless hardship on entities and individuals in the Imperial Valley.

**Comment #15** - CBD claims that proposed rule revisions are inadequate to address the serious and ongoing PM<sub>10</sub> air pollution concerns in Imperial County, particularly regarding emissions due to OHV use on public lands. The comment asks EPA to reject the rule revisions because they will not adequately improve air quality as required by law.

**Response #15** - ICAPCD revised and resubmitted Regulation VIII primarily to address the CAA obligation for PM<sub>10</sub> BACM, and EPA is

similarly evaluating the rules primarily to ensure that they fulfill BACM. The broader air pollution issues raised by this comment, as to whether the rules are sufficient to address Imperial's overall PM<sub>10</sub> problem, are appropriately addressed separately through the CAA obligations for ICAPCD and CARB to develop a PM<sub>10</sub> attainment demonstration.

**Comment #16** - CBD states that the proposed rule revisions fail to provide sufficient guidance, limitations or enforcement measures to ensure that the OHV DCPs are adequate and fully implemented. The comment asserts that the revised rule relies on good faith implementation by the Bureau of Land Management (BLM) and California Department of Parks and Recreation (DPR), which is not warranted by past practice.

**Response #16** - ICAPCD has significantly revised the OHV DCP requirements in ICAPCD Rule 800 Sections D.3 and F to make them more stringent and enforceable. For example, Section F.5.b.2 now requires maps showing OHV areas, Section F.5.c now explicitly requires stabilization of high-traffic roads and traffic areas during OHV events, Section F.5.d now requires description of all monitoring and corrective action to reduce emissions during OHV events, and Section F.7 establishes additional requirements for new OHV areas. While we agree that some of the OHV requirements are not as specific and

prescriptive as many requirements for traditional stationary sources (e.g., facility X must emit under Y pounds/day), they are adequately enforceable and appropriate given the variability (e.g., the popularity and thus emissions of specific OHV areas change over time) and limited regulatory history of this activity. We also believe these controls are sufficiently stringent to fulfill the CAA BACM requirements as demonstrated by the 2012 BACM assessment. See also Response #2 above.

However, we encourage ICAPCD to consider further controls in OHV areas if additional emission reductions are needed in the future to meet federal and/or State ambient air quality standards.

**Comment #17** - CBD states that BLM recently issued a proposed Recreational Area Management Plan (RAMP) and Final Environmental Impact Statement (FEIS) proposing to increase the area in Imperial open to OHV use by 40,000 acres, further increasing PM<sub>10</sub> emissions. The comment notes that EPA had previously expressed concerns about potential increased air quality impacts of the BLM's preferred alternative in the FEIS and that BLM largely ignored EPA's comments. The comment asserts that additional shortcomings of the FEIS are further evidence that BLM cannot be relied on for good-faith efforts to comply with ICAPCD Rule 800.

**Response #17** - EPA's previous comments regarding BLM's RAMP and FEIS are independent of today's action on revisions to ICAPCD's

Regulation VIII. Revisions to Rule 800 Section F.7 establish additional requirements for new OHV areas, but do not prohibit increased OHV areas and associated PM<sub>10</sub> emissions. ICAPCD Regulation VIII's OHV requirements are adequately enforceable and do not rely solely on good-faith efforts at compliance. See also Response #16 above.

**Comment #18** - ADEQ recommends that EPA continue to evaluate BACM on a case-by-case basis, considering the relative contributions of source categories such as OHVs, to ensure that the most cost-effective control measures appropriate for contributing anthropogenic sources in each planning area are adopted and implemented.

**Response #18** - EPA agrees that local conditions should be considered as part of a BACM analysis and ICAPCD has included such information in its BACM analysis. For example, EPA agrees that ICAPCD has adequately demonstrated BACM for OHV activity based in part on the 2012 BACM assessment which includes discussion of local conditions (e.g., less than 1% of open lands are urban vacant areas in Imperial County compared to 52% of Maricopa's nonattainment area open lands.)<sup>24</sup>

**Comment #19** - ADEQ does not support any presumption that inclusion of prerequisites similar to those in ICAPCD Rule 801

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<sup>24</sup> 2012 BACM Assessment, pg. 8.

Section D are necessary to determine that a rule is BACM.

Rather, the comment encourages EPA to continue reviewing each rule in the context of each area's overall air pollution control strategy when making a determination that a rule fulfills BACM or most stringent control measure requirements.

**Response #19** - As mentioned in Response #18 above, we agree that local conditions should be considered as part of a BACM analysis. We also believe that the existence of requirements in other areas should be considered as part of a BACM analysis. For example, it would be relevant for a BACM analysis for OHV in Arizona to consider both ICAPCD Rule 801 and any local conditions specific to Arizona. However, today's action regards ICAPCD Rules 800, 804, 805 and 806, and nothing in the comment suggests any change to our proposed approval.

### **III. EPA Action**

No comments changed our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP. This action permanently terminates all sanctions and FIP implications associated with the July 8, 2010 final action.

EPA's preliminary view is that the Regulation VIII rules as revised in October 2012 constitute reasonable control of the

sources covered by Regulation VIII for the purpose of evaluating whether an exceedance of the PM<sub>10</sub> NAAQS is an exceptional event pursuant to the exceptional events rule, including reasonable and appropriate control measures on significant contributing anthropogenic sources. This statement does not extend to exceedances of NAAQS other than the PM<sub>10</sub> NAAQS, or to events that differ significantly in terms of meteorology, sources, or conditions from the events that were at issue in EPA's July 2010 final action and associated litigation. EPA is not making any determinations at this time with respect to any specific PM<sub>10</sub> exceedances.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those

requirements would be inconsistent with the Clean Air Act;  
and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register.

A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Particulate matter, Reporting and recordkeeping requirements.

March 27, 2013

Alexis  
Acting  
Region

Strauss  
Regional Administrator,  
IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraphs (c) (424) to read as follows:

§52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(424) New and amended regulations for the following APCDs were submitted on November 7, 2012 by the Governor's designee.

(i) Incorporation by Reference

(A) Imperial County Air Pollution Control District

[1] Rule 800, "General Requirements for Control of Fine Particulate Matter PM10," amended on October 16, 2012.

[2] Rule 804, "Open Areas," amended on October 16, 2012.

[3] Rule 805, "Paved and Unpaved Roads," amended on October 16, 2012.

[4] Rule 806, "Conservation Management Practices (CMPs)," amended on October 16, 2012.

Date: 04/22/2013]